

**IN THE HIGH COURT OF URRARANCHAL AT
NAINITAL**

(Court's order whether the case approved
for reporting or not)

[Chapter VIII, Rule 32(2) (b)]

Description of the case

Writ Petition No. 1298 of 2004 (S/S)

Madan Lal Pokhriyal Petitioner.

V e r s u s.

State of U.P. and others. Respondents.

Approved for reporting

~~Not approved for reporting~~

Date of decision: September 16, 2005

Initials of Judge

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL.**

Writ Petition No. 1298 (S/S) of 2004

Madan Lal Pokhriyal,
son of Sri S.L. Pokhriyal,
resident of Village – Gwari Garh,
post office – Choprhiyuen Patti,
Ghurhdorshyuen,
District – Pauri Garhwal.

.....Petitioner.

V e r s u s.

1. State of U.P. through Secretary, Revenue, Government of Uttaranchal, Dehradun.
2. Chief Revenue Commissioner, Government of Uttaranchal, near Survey Chowk, E.C. Road, Dehradun.
3. Commissioner Garhwal Division, Pauri Garhwal.
4. District Magistrate, Pauri Garhwal.
5. Deputy District Magistrate (SDM), Srinagar, Garhwal, District – Pauri Garhwal.
6. Tehsildar, Srinagar, Garhwal, District – Pauri Garhwal.

.....Respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri Vinod Nautiyal, learned counsel for the petitioner and learned standing counsel for the State of Uttaranchal, who has accepted notices on behalf of respondents.

By means of this writ petition, petitioner has challenged the order dated 22.07.2002 passed by District Magistrate, Pauri Garhwal accepting the application of the petitioner dated 19.06.2002 for voluntary retirement from service to be effective with effect from 30.09.2002; order dated 21.01.2003 passed by District Magistrate, Pauri Garhwal rejecting the application of the petitioner dated 23.09.2002 by which the petitioner has sought withdrawal of

earlier application dated 19.06.2002 and order dated 10.09.2004 passed by the Commissioner, Garhwal Mandal, Pauri Garhwal rejecting the appeal of the petitioner preferred against the order dated 21.01.2003 and 22.07.2002 passed by District Magistrate, Pauri Garhwal.

The brief facts of the case as narrated in the writ petition are that the petitioner was appointed as clerk in Collectorate, Pauri Garhwal on 15.10.1979. On 25.10.2001, the petitioner was transferred from the post of Nayab Nazir, Tehsil - Sri Nagar, District - Pauri Garhwal to the post of Revenue Accountant, Tehsil - Sri Nagar, District - Pauri Garhwal. After taking over charge of Revenue Accountant, petitioner found financial irregularities in relation to the deposits of the amount collected by the Collection Amins. He has submitted an application to Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal indicating the financial irregularities and also requested that he may be transferred to the post of Nayab Nazir. Since the request of petitioner for transferring to the post of Nayab Nazir was not accepted by the respondents he continued to work as Revenue Accountant at Tehsil - Sri Nagar, District - Pauri Garhwal. The collection Amins were under the supervision of the petitioner since they were not being paid salary the petitioner on 19.06.2002 prepared a note and after obtaining the signature of Tehsildar put up the matter before respondent no. 5 to counter sign the note prepared by him to the effect that a direction be sought from respondent no. 4 i.e. District Magistrate, Pauri Garhwal regarding payment of salary to Collection Amins. Respondent no. 5 asked the petitioner not to send the file to the District Magistrate and directed the petitioner to communicate Collection Amins that the file relating to their salary has been sent for opinion of

respondent no. 4 and when the petitioner expressed his inability in doing so respondent no. 5 got annoyed and insulted the petitioner by saying that *"You are posing yourself as Harish Chandra, you get out, you are mad. If you cannot act according to the wishes and desire of the superior officer you should resign, otherwise I will see you. You get out from room."*

The petitioner made a representation disclosing the whole incident relating to the behaviour and attitude of respondent no. 5 towards the petitioner and requested the District Magistrate to inquire into the matter. The application was submitted by the petitioner to the District Magistrate, through Tehsildar, who was immediate officer of the petitioner. Simultaneously, petitioner also applied for two months leave on the same date. There were 177 days leave due credit in the account of the petitioner on the date when the application was moved by the petitioner for two months leave

The petitioner was very much disturbed with the behaviour and attitude of the respondent no. 5 and was also afraid that false charge can be initiated against him, consequently an application dated 19.06.2002 was submitted by the petitioner for voluntary retirement to be effective after three months. The aforesaid application was made by the petitioner because he was very much mentally disturbed and was not in a position to take rationale judgement and during that time petitioner has moved this application. He had completed 28 years of service. During long tenure of his service i.e. for 28 years all the superior officers of the petitioner were satisfied with his work. No adverse entry was recorded against the petitioner. No inquiry was pending on the other hand he had received number of appreciation from his superior officers. During this time the Tehsildar,

who was the immediate officer of the petitioner has also advised the petitioner to reconsider his decision for taking voluntary retirement. The whole family of the petitioner was also suffering from mental agony by forcible compelling the petitioner to apply for voluntary retirement. Consequently, petitioner with his wife met District Magistrate, who assured that he would do the needful. When the petitioner came to know that the District Magistrate, Pauri Garhwal instead of enquiring the matter has passed an order on 22.07.2002 accepting the voluntary retirement of the petitioner to be effective from 30.09.2002, which is against assurance given by him. The petitioner on 23.09.2002 submitted an application for withdrawal of his application for voluntary retirement. District Magistrate, on 21.01.2003 rejected the petitioner's application dated 23.09.2002. The said order of rejection was received by the petitioner on 31.01.2003

Aggrieved by the order of the District Magistrate, petitioner preferred an appeal before Commissioner, Garhwal Division on 24.02.2003. On 06.01.2004 the Commissioner, Garhwal Division, sought direction in this regard from Chief Revenue Commissioner, Uttaranchal, Dehradun, who in turn by letter dated 10.03.2004 directed the Commissioner to decide the appeal of the petitioner on his own discretion in accordance with law. The Commissioner vide order dated 10.09.2004 rejected the appeal of the petitioner. Aggrieved by the order passed by the Commissioner, the petitioner has filed the present writ petition.

Respondents have filed counter affidavit. Learned counsel for the petitioner has submitted that application for voluntary retirement was moved by the petitioner on 19.06.2002 and by that application it was requested that

voluntary retirement may be granted to the petitioner after three months. The said application was allowed by the District Magistrate, granting voluntary retirement to the petitioner by order dated 22.07.2002 to be effective from 30.09.2002. The petitioner had moved another application dated 23.09.2002 for withdrawal of his earlier request for granting him voluntary retirement.

Since the application for withdrawal of earlier application dated 19.06.2002 moved by petitioner prior to the date of voluntary retirement as per order of the District Magistrate, so the order of rejecting the application of the petitioner to withdraw the proposal of voluntary retirement was bad in the eyes of law and the Commissioner, Garhwal Division, Pauri Garhwal also committed error in not allowing the appeal of the petitioner.

Learned counsel for the petitioner has submitted that letter dated 19.06.2002 was conditional and it was proper for the District Magistrate, first to inquire into whole episode and then to take decision on the application of the petitioner for voluntary retirement.

Learned counsel for the respondents has submitted that since the letter for withdrawal was made after three months and after the District Magistrate had accepted the prayer of petitioner for voluntary retirement the District Magistrate has rightly rejected the application of the petitioner and the Commissioner, Garhwal Division, Pauri Garhwal was also right in rejecting the appeal of the petitioner.

Learned counsel for the petitioner has relied upon the judgment of the Apex Court "J.N. Srivastava Vs. Union of India and another" reported in 1998 (9) SCC 559 wherein the Apex Court has held that now it is a well settled law that even if the voluntary retirement notice is moved by the

employee and gets accepted by the authority within time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement.

In the present case, also through the voluntary retirement notice was accepted by the Authority on 22.07.2002. The petitioner had moved application for withdrawal on 23.09.2002 before the date of retirement is reached i.e. 30.09.2002 as per order of District Magistrate dated 22.07.2002 and as such, the stand taken by the respondent that the application for withdrawal of the notice was rightly rejected because the same was received after the Authority had accepted the notice of voluntary retirement is not correct.

District Magistrate, Pauri Garhwal has informed the petitioner vide order dated 21.01.2003 about rejection of his letter dated 23.09.2002, which was moved by the petitioner for withdrawal of his voluntary retirement notice. In the aforesaid letter, the District Magistrate has stated that application of the petitioner for the withdrawal of voluntary retirement notice is rejected and the complaint letter of the petitioner dated 19.06.2002, which was regarding the misbehaviour of Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal was found baseless and after inquiry it has been found that petitioner was habitual of being remain absent from office and was also late comer.

Since the petitioner was harassed and humiliated by the Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal, and it was because of this humiliation the petitioner had moved application for voluntary retirement and since there was a request from the petitioner to the District, Magistrate, Pauri Garhwal, simultaneously, for

inquiry of episode it was proper for the District Magistrate, to hold inquiry prior to passing the order on the application of the petitioner for notice of voluntary retirement. The District Magistrate, however, instead of holding inquiry accepted the voluntary retirement with effect from 30.09.2002. The District Magistrate, Pauri Garhwal, in his order rejecting the application of the petitioner for withdrawal of notice for voluntary retirement has stated that the notice for voluntary retirement and inquiry on the incident are two separate issues.

No doubt the issues are separate but the same are linked to some extent as the notice of voluntary retirement, according to the petitioner, was result of humiliation and insult of petitioner by Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal and in the circumstances aforesaid, it would have been proper for the District Magistrate, to find out the truth.

According to the learned counsel for the respondents District Magistrate asked report from Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal and Sub Divisional Magistrate submitted the report about incident stating therein that the petitioner is habitual in remaining absent from office and used to come late in the office. It is further stated in the report that petitioner was warned by him a number of times for remaining absent and explanation was also sought from the petitioner.

On 09.08.2005 this court directed the learned standing counsel to produce record relating to the petitioner.

I have gone through the record. Learned standing counsel could not show any explanation sought from petitioner by the Sub Divisional Magistrate, Sri Nagar, District - Pauri Garhwal. There is no document in the record

which shows that the Sub Divisional Magistrate, Sri Nagar, District – Pauri Garhwal has ever sought explanation from petitioner in regard to coming late to office or for remaining absent from the office. Meaning thereby, the Sub Divisional Magistrate, Sri Nagar, District – Pauri Garhwal has sent a false report to the District Magistrate, Pauri Garhwal. Learned standing counsel has further submitted that the petitioner is not working since 20.06.2002 and he is not entitled for salary on the plea no work no payment.

In the aforesaid case, decided by the Hon'ble Supreme Court, this aspect was also considered and the apex court has held as under:

"The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation. Respondents will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the actual date of superannuation."

The principal of no work no pay will not be applicable to the petitioner as the petitioner is willing to work but respondents did not allow him to work. Applying the aforesaid principle, which is laid down by the Apex Court, the petitioner shall be treated in service and shall be paid all monetary benefits due to him during that period.

In view of the aforesaid discussion, writ petition is allowed. Orders dated 22.07.2002 and 21.01.2003 passed by District Magistrate, Pauri Garhwal and order dated 10.09.2004 passed by the Commissioner, Garhwal Mandal, Pauri Garhwal are quashed. No order as to costs.

(M.M. Ghildiyal, J.)

September 16, 2005
SKSharma